

## REMARKS

Claims 1-18 were examined in the final Office Action mailed June 11, 2008. Claims 1-4 and 7-14 stand rejected as obvious over U.S. Patent Application Publication No. US 2002/0099640 to *Lange* in combination with U.S. Patent Application Publication No. 2004/0176990 to *Vacante, et al.* Claims 5, 6 and 15-18 stand rejected as obvious over *Lange* and *Vacante* in view of Official Notice.

Claims 1 and 12 are amended. Claims 1-18 remain pending. Reconsideration of the rejections is respectfully requested in view of the above amendments and the remarks which follow.

A. Obviousness Rejection of Claims 1-4 and 7-14 over *Lange* in view of *Vacante* is Addressed.

The 35 U.S.C. 103(a) rejection of claims 1-4 and 7-14 is respectfully traversed.

Amended claim 1 relates to a method of processing a futures contract being traded on a regulated exchange:

defining an eroding futures contract involving a single futures contract having a defined size and a plurality of defined final settlement events, wherein the contract specifies a period of time over which the plurality of defined final settlement events are scheduled to occur;

executing trades between buyers and sellers of the eroding futures contract on a regulated exchange, wherein the eroding futures contract has an initial margin associated therewith; and

upon occurrence of one of the final settlement events, finally settling part of the futures contract, wherein the initial margin changes as a result of the finally settling of part of the futures contract.

Amended claim 12 recites a method for mitigating risk related to price volatility of a commodity having futures traded on a regulated exchange, as follows:

establishing a futures position involving a single futures contract traded on a regulated exchange wherein the futures contract specifies a starting size, a settlement period, and a specified delivery location, wherein the defined settlement period covers a range of time, and wherein the futures contract has an initial margin associated therewith; and

during the defined settlement period, finally settling a portion of the variable quantity single futures contract, wherein if the variable quantity single futures contract remains open, a changed initial margin is associated therewith.

Each of the claimed methods relates to “a single futures contract” which has been traded on a regulated exchange, with which is associated an initial margin which changes as a result of a part settlement of the singles futures contract.

1. *Lange* Teaches Only Groups of Futures Contracts Implying Multiple Margin Calculations for an Eroding Strip

The claimed methods are different than the methods associated with *Lange*'s groups of futures contracts, each having different expiration dates. As clearly defined by *Lange*, a “strip” is a group of futures contracts. Emphasis added. See *Lange* [0709], lines 6-8. In the traditional trading of strips, an individual futures contract or multiple individual futures contracts are settled, each in its entirety, leaving fully unsettled whatever future contracts remain in the strip. Individual futures contracts of a strip are not partially settled.

The difference between the claimed eroding futures contract and a strip as taught by *Lange* is significant for a number of reasons. One reason relates to ongoing calculation of risk, and also to resulting margin requirements. As an initial matter, in a single eroding futures contract involving a single futures contract, risk may be recalculated periodically, for example, on a daily basis, but such a calculation only relates to the single futures contract. As noted at paragraph [0046] of the present specification. in the case of an eroding futures contract in accordance with the present invention, the initial margin value changes upon each settlement event to reduce or erode the initial margin for a contract in proportion to the reduction in the value of the open position for that contract. In contrast, for a strip, for risk calculated at the same periodic rate, risk is expected to be calculated on all futures contracts of the strip remaining unsettled. These multiple calculations may result in multiple margin calls.

2. *Vacante* Constitutes Non-analogous Art and Fails to Teach an Eroding Futures Contract Traded on a Regulated Exchange or Initial Margins.

As is clear from a fair reading of *Vacante*, taken as a whole *Vacante* relates to trading of a futures contract for purchase of resellable of goods or services by purchasers, sellers and third-party purchasers through a network. See paragraph [0029]. These are business to business transactions. They often involve specially

negotiated non-standard contract terms (see paragraph [0015]) and multiple offers and counteroffers (see paragraph [0018]). Nowhere is the phrase "regulated exchange" or its equivalent identified. This explains why the example of risk is relates to a seller of a future wanting to ensure that the purchasers of the future is the rightful owner. See paragraph [0022]. See also paragraphs [0023] and [0024] relating to proxies, public keys, verified digital signatures, and digital certificates. There is no discussion of risk management or initial margins. Nowhere are margins discussed, mentioned or recalculated on an eroding, single futures contract.

*MPEP* 2141.01(a) summarizes how "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Wang Labs. Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993).

Accordingly, we first compare the field's of invention:

- The field of applicant's endeavor relates to automatically settling futures contracts on an eroding basis, with such futures contracts traded exclusively on regulated exchanges.
- The field of endeavor of *Vacant* relates to purchases of goods or services in advance and the problems associated uncertain future need, wasting valuable inventory and storage space and suffering consequences of accepting unwanted good or service or cancelling a contract.

The fields of endeavor are different.

The question then becomes, would *Vacante*, because of the matter with which it deals, logically have commended itself to the inventors considering their problem.

- *Valange* never mentions the phrase "regulated exchange" or equivalent. *Valante* never mentions "margin" for purposes of controlling risk. *Valante* is concerned with the risk of making sure a purchaser is who he says he is.

- The problem the inventors are trying to solve is how to track and manage risk associated with an eroding single futures contract being traded on a regulated exchange.

Thus, given the problem addressed in the particular case, which does not simply relate to a system of business to business purchasing and reselling of goods and services as taught by *Valante*, *Valante* would not have commended itself to the inventors hereof. Accordingly, *Valante* constitutes non-analogous art and should not be used to support the obviousness rejection. *Prima facie* obviousness has not been established in the absence of *Valante* with *Lange*.

Assuming, *arguendo*, that *Valante* constitutes analogous art, even in combination, *Lange* and *Vacante* fail to teach or suggest an initial margin for an eroding singles futures contract traded on a regulated exchange which changes after each final part settlement of the eroding singles futures contract. Accordingly, as amended, independent claims 1 and 12, and dependent claims 2-4, 7-11, 13 and 14 are patentably distinguishable over *Lange* in view of *Vacante*. Withdrawal of the obviousness rejection of claims 1-4 and 7-14 is thus respectfully requested.

B. Obviousness Rejection of Claims 5, 6 and 15-18 over *Lange* and *Vacante* in view of Office Notice is Addressed.

The rejection of claims 5, 6 and 15-18 under U.S.C. §103(a) over *Lange* in view of *Vacante* and Office Notice is respectfully traversed.

Claims 5, 6 and 15-18 include the features of independent claims 1 and 12 through dependence, and so each claim relates to a method involving “a single futures contract” traded on a regulated exchange which either has a plurality of final settlement events, involving multiple trades and settlement of part of the futures contract (in terms of claim 1) or has a portion of a variable quantity futures contract settling at one time. As discussed above, the strip of futures contracts described in *Lange* is a group of futures contracts, not a single futures contract with an eroding quality in which parts or portions are settled out.

While Official Notice may be taken that a typical futures contract may be settled early at any time up through the final settlement date, either through cash payment or delivery of the underlying commodity, once so settled, the particular

futures contract of the strip is no longer open. While other futures contracts in the strip have not reached their settlement date, the early settlement of a particular futures contract of a strip neither teaches nor suggests the settlement of a part of portion of a single futures contract, as is claimed.

Moreover, the change of an initial margin of an eroding single futures contract as claimed is not taught or suggested by the references of record. Accordingly, dependent claims 5, 6 and 15-18 are patentably distinguishable and non-obvious over a combination of *Lange*, *Vacante* and the Official Notice taken by the Examiner. Withdrawal of the obviousness rejection of claims 5, 6 and 15-18 is thus proper and respectfully requested.

C. Conclusion

In addition to the RCE fees associated with this filing , the Office is authorized to charge Deposit Account No. 50-1123 any other fees deemed associated herewith.

The Applicant looks forward to the Examiner's consideration. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,



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